

### REMARKS

1           The Examiner has rejected claims 1-8 and 12-15 under 35 U.S.C. § 102(b) as  
being anticipated by Paquin (US 3,413,820). The applicant respectfully disagrees with  
the Examiner's rejections. However, in order to expedite the prosecution of the present  
5           application, the Applicant has amended claim 1 to more clearly read on the applicant's  
invention. Specifically, claims 2 and 4 have been cancelled and their limitations have  
been substantially incorporated into claim 1. With further amendments, claim 1 now  
positively recites the opening formed in the shell of the food container and limits its  
location within the shell. Amended claim 1 states that the opening is formed "at  
10           location within said shell that is lower than said expansion zone, when said opening is  
positioned to face in an upward direction, to prevent said temperature storing medium  
from substantially filling said expansion zone when said temperature storing medium is  
being inserted within said chamber."

15           Paquin does not illustrate or otherwise teach an "expansion zone" as suggested  
by the Examiner. Figure 2 of the Paquin reference illustrates a container, having an  
inner chamber disposed between inner and outer walls. An opening is formed to be in  
communication with the inner chamber. The reference makes no mention of an  
"expansion zone." Rather, Paquin merely states that the refrigerant should fill  
20           "approximately 90% of the space between the walls 21 and 22, so expansion will not  
cause the breakage of the walls." Paquin, col. 2, lines 54-56. The Examiner specifically  
references Paquin's Figure 2 and labels the hollow portion of the outer bottom rim  
portion 32 to be an expansion zone. Figure 2 of the Paquin reference depicts  
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1 refrigerant occupying far greater than 90% of the inner chamber, as prescribed by  
Paquin. To be sure, the space identified by the Examiner as the expansion zone in the  
Paquin device represents far less than 10% of the inner chamber. A space of such  
insignificant size cannot be considered an "expansion zone." A user of the Paquin  
5 device is left to guess at the amount of refrigerant disposed within the inner chamber  
and hope the walls do not break during the freezing cycle.

Moreover, the top of the opening on the Paquin device is at the top of, if not  
above, the alleged expansion zone. Accordingly, as a user fills the Paquin device with  
10 refrigerant, the user could very easily overfill the inner chamber, such that refrigerant  
partially, if not completely, filled the alleged expansion zone. Claim 1 of the present  
application specifically requires the opening to be lower than the expansion zone  
when the container is being filled. This structural orientation is not shown or otherwise  
suggested by the Paquin reference. Accordingly, Paquin does not anticipate amended  
15 claim 1 and the Examiner is respectfully requested to consider amended claim 1 and  
allow the same.

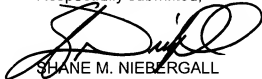
It is further submitted that the Paquin reference would not have provided a  
person of ordinary skill in the art with a sufficient teaching to render the container of  
20 amended claim 1 obvious. Obviousness can only be established by combining or  
modifying the teachings of the prior art to produce a claimed invention where there is  
some teaching, suggestion, or motivation to do so, found either explicitly or implicitly in  
the references themselves or in the knowledge generally available to one of ordinary  
skill in the art. No teaching motivation or suggestion can be found within the cited prior  
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1 art that teaches or suggests the expansion zone or opening placement specifically  
1 claimed within amended claim 1.

Claims 3, 5-8 and 13-15 each ultimately depend from amended claim 1 and are  
believed to be allowable for at least the reasons set forth herein with respect to  
5 amended claim 1. Accordingly, the Examiner is respectfully requested to reconsider  
5 claims 3, 5-8, and 13-15 and allow the same.

No fees or extensions of time are believed to be due in connection with this  
amendment; however, consider this a request for any extension inadvertently omitted,  
and charge any additional fees to Deposit Account No. 502093.

10 Respectfully submitted,



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**CERTIFICATE OF MAILING**

I hereby certify that the original of this AMENDMENT for JAMES M. KEITGES,  
Serial No. 10/632,498, was mailed by first class mail, postage prepaid, to Mail Stop  
Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on  
this 1<sup>st</sup> day of March, 2005.

  
SHANE M. NIEBERGALL